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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,723	07/03/2001	Francois Gonthier	492-PCT/USA	8672

26031 7590 09/30/2003

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CANADA

EXAMINER
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FORTUNA, JOSE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 09/869,723	<b>Applicant(s)</b> GONTHIER, FRANCOIS	
	<b>Examiner</b> José A Fortuna	<b>Art Unit</b> 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 03 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 070303                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "32" has been used to designate both the holder and one of the positioning device, see page 30, lines 3-6. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-18 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bloom, US Patent No. 5,931,983.

Bloom teaches a method of forming a fiber optic coupler in which two or more fibers are placed in contact with each other, stripped of their protective plastic jacket and fused, see abstract. Bloom teaches also the elongation of the fibers to get an adiabatic profile, i.e., a lossless fusion. Note that all the claimed steps are done automatically in the reference, Bloom. Bloom teaches that fusing heat is greater than the pulling heat, see column 4, lines 45-67. Note that Bloom teaches in the same lines that torch is moved away from the fibers while pulling to decrease the heat or that other heat source can be used, i.e., and electrical heater in which the heat can be controlled, see column 5, lines 44-51. This is

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equivalent to the use of different torches having different heating degrees. As to the brushing of the fibers, Bloom teaches that the torch can be moved axially to distribute the heat along the fusion region, see column 6, lines 22-44. It seems that the cited reference, Bloom, teaches all the elements of these claims or at least the minor modification(s) to obtain the claimed process/product would have been obvious to one of ordinary skill in the art as logic optimization process.

4. Claim 19 is rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bloom, cited above.

5. Claim 19 is a product by process claim and Bloom teach a product which is similar to the one claimed. In the event any differences can be shown for the product-by-process claim 19, as opposed to the product taught by the reference, Bloom, such differences would have been obvious to one of ordinary skill in the art as routine modification of the product in the absence of a showing of unexpected results, see *In re Thorpe*, 227 USPQ 964 (CAFC 1985).

As the afore mentioned claim is a product by process claim, it is deemed that "[A]ny difference imparted by the product by process claims would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicants to establish that their product is patentably distinct, ..." *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

Further, "[P]rocess limitations are significant only to the extent that they distinguish the claimed product over the prior art product." *In re Luck*, 177 U.S.P.Q. 523 (1973).

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6. Claim 19 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gonthier et al., US Patent No. 5,796,885 or Tremblay et al., US Patent No. 4,586,784, or Kawasaki et al., 4,763,977 or Hill et al., US Patent No. 5,054,874 or Bricheno et al., GB 2220765.

7. Claim 19 is a product by process claim and Gonthier et al., Tremblay et al., Kawasaki et al., Hill et al., Bricheno et al., teach products with is similar to the one claimed. In the event any differences can be shown for the product -by-process claim 19, as opposed to the product taught by the references, Gonthier et al., Tremblay et al., Kawasaki et al., Hill et al. and Bricheno et al., such differences would have been obvious to one of ordinary skill in the art as routine modification of the product in the absence of a showing unexpected results, see *In re Thorpe*, 227 USPQ 964 (CAFC 1985).

As the afore mentioned claim is a product by process claim, it is deemed that "[A]ny difference imparted by the product by process claims would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicants to establish that their product is patentably distinct, ..." *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

Further, "[P]rocess limitations are significant only to the extent that they distinguish the claimed product over the prior art product." *In re Luck*, 177 U.S.P.Q. 523 (1973).

### ***Conclusion***


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in the art of "Process of manufacturing Multiplexing and demultiplexing."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to José A Fortuna whose telephone number is 703-305-7498. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on 703-308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0662.

  
José A Fortuna  
Primary Examiner  
Art Unit 1731

JAF